GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR SECRETARIAT

Labour Dispute.—Industrial Dispute between the workmen and the management of Sanyasi Brothers, Bangalore-2.

Award of the Presiding Officer, Industrial Tribunal, Bangalore, published.

Read the following Papers :—

(1) Letter No. I.T. 2051—74-75, dated 29th March 1975 from Shri M. C. Konnur, Presiding Officer, Industrial Tribunal, Bangalore.

BEFORE THE INDUSTRIAL TRIBUNAL IN KARNATAKA, BANGALORE.

Dated 22nd March 1975

Present

Sri M. C. Konnur, LL.B., *Presiding Officer.*

I. D. No. 24 of 1972

First Party.—The workmen of Sanyasi Brothers, Bangalore.

Vs.

Second Party.—The Management of Sanyasi Brothers, 59, Sunkalpet, Bangalore-2.

Appearances

For the First Party.—

Sri Alampalli Venkatram, General Secretary, Bangalore General Labour Union, Subedar Chatram Road, Bangalore-9.

For the Second Party—

Sri K. Eswar Rao Sanyasi, Kartha and Manager, Sanyasi Brothers, 59, Sunkalpet, Bangalore-2.

Reference

(*Government Order No. FCL* 1209 *LLD* 71, *dated 4th August* 1972).

The State Government, being of opinion, that an industrial dispute existed between the workmen and the management of Sanyasi

Brothers, No. 59, Sunkalpet, Bangalore-2, referred the dispute by its order No. FCL 1209 LLD 71, dated 4th August 1972 for adjudication to this Tribunal under Section 10(1) (d) of the Industrial Disputes Act, 1947, on the following points :—

Is the management of M/s. Sanyasi Brothers, Sunkalpet, Bangalore, justified in refusing to pay full back wages and the benefit of continuity of services to the following workers with effect from the dates mentioned against each :—

1. Sri Chikkaram—Twister—from 12th April 1969;
2. Sri Venkatesh—Winder—from 12th April 1969; and
3. Smt. Nagamma—Winder—from 8th April 1969.

If not, what relief are the said workers entitled to ?

2. The workmen, represented by the General Secretary, Bangalore General Labour Union, hereinafter referred to as the I Party and the management of Sanyasi Brothers, Bangalore, represented by Sri K. Eswar Rao Sanyasi, hereinafter referred to as the II Party have filed their respective statements.

3. The I Party filed its statement of demands after the II Party filed its statement. The statement of demands filed by the I Party is a lengthy statement running into 32 pages narrating elaborately all the facts that preceded the dispute including facts of similar instances which are incorporated with a view to show the conduct of the II Party. It may not be necessary to reproduce the statement of the I Party in all its elaboration and I would be stating only the material facts that led to the present dispute.

4. The II Party-Management has a silk factory which is stated to have been registered under the Factories Act. It is alleged that the employees were required to be paid the minimum wages fixed by the Government for the silk industry and other benefits. As the management was not giving the statutory benefits to its workers, one worker, by name Lakshmamma, filed an application in the Labour Court at Bangalore, which was opposed by the management but was allowed by the Labour Court. The management had illegally retrenched the services of another worker, Muniamma, and the Union had addressed a letter to the Management for payment of retrenchment compensation. The Management took a *mala fide* contention that Muniamma was not retrenched and that she had voluntarily abandoned the services. Even in the case of both Muniamma and Lakshmamma they were not allowed to join their duties and the management alleged that they had voluntarily abondoned their jobs. The statement elaborately refers to the letters addressed by the

Union to the management in this regard. The management's contentions in respect of these two workers in the Labour Court that they had abandoned their services and that they were not retrenched was shown to be false by reference to their own returns sent to the P.F. Authorities and these instances are pointed out with a view to show that the management has always come out with a plea that the workers have left their services on their own accord whenever the worker complained of illegal termination.

Sri Chikkaramu and Venkatesh, two of the concerned workmen in this dispute also filed an application in the Labour Court on 24th March 1969 for claiming the benefits of the minimum rates of wages for the weekly, national and festival holidays and overtime wages. Chikkaramu has joined the services of the II Party in 1959 and not in 1967 as alleged by the II Party and even though the workmen was working continuously, he was covered for E.S.I. only from 15th May 1967 by manupulating the records. The services of Chikkaramu were wrongfully terminated on 12th April 1969 without any notice or enquiry. Sri Venkatesh joined the service in 1965. These two workers never absented as alleged by the Management. On 10th April 1969, Sri Eswar Rao Sanyasi brought two constables and they were compelled to go to the Police Station where they were detained till 12-00 Noon and later let off. After they were let off, they came to factory and worked till 5-30 P.M as usual. Sri Eswar Rao Sanyasi prevailed upon these two workers to sign the typed matter and said that unless they resigned from the Union and withdrew the case from the Labour Court, they will have to face very serious and dangerous consequences. A letter dated 10th April 1969 was addressed to the management narrating the whole incident and Venkatesh wrote another letter, dated 9th April 1969 to the management referring to the incident of 1st March 1969. Sri Eswar Rao Sanyasi asked the workmen to resign from the Membership of the Union and withdraw the case from the Labour Court and when Venkatesh asked Sri Eswar Rao Sanyasi what guarantee was there that he would not be terminated from service if he did so, Sri Eswar Rao Sanyasi had given in writing stating that he would be paid Rs. 3 per day and Re. 0-35 P. for overtime work and that there was no ill-will between them and that Venkatesh would never be removed from service and would be continued as a permanent worker without any trouble. Venkatesh wanted to consult the Union and on 9th April 1969 Eswar Rao Sanyasi called Venkatesh to sign the typed matter to the effect that he had withdrawn the case and had resigned the Union. Venkatesh refused to sign it. When, on 11th April 1969, both these workers reported for duty, they were told that they would be marked as absent even though they worked in the factory if they did not resign from the Union and withdraw the case from the Labour Court. On the same day, a letter was addressed

to the management complaining about ,this and on the next day they were not allowed to enter inside the factory. They reported for duty on the following days, but they were not allowed inside the factory. On 17th April 1969, they were accompanied by the General Secretary of the Union to the factory and the factory inspector also paid a visit on that day and the irregularities in maintaining the records by the Management were noticed by the Factory Inspector. Sri Eswar Rao Sanyasi did not turn up to the factory on that day. Letters were addressed immediately after each incident to the Management by the Union.

Smt. Nagamma was working in the factory for 3½ years prior to 20th February 1969 as a Winder. She was not being given proper wages and the other benefits of Privilege leave and she was not covered by the E.S.I. Scheme. She requested for leave four days from 14th March 1969 and she was permitted to go. When she reported for duty on 19th April 1969, she was told that some other worker had been taken in her place and that her services had been terminated as she had taken two days leave more. On 20th February 1969, a letter was addressed under her signature to the management complaining about this and Nagamma reported for duty on 3rd March 1969 as per the oral message sent to her through another worker and she commenced working as usual in the winding section. When she made a request for giving her E.S.I. card and for covering under the Provident Fund Scheme, she was told that it will be done. She could not attend to her work on 7th April 1969 as she was required to attend her brother's marriage. When she went for work on 8th April 1969, she was asked not to work until she signed an undertaking that she would not join any Union or make any claim. She also addressed a letter on the same day complaining about this incident to the management. She was allowed to work from 9th April 1969 and she was issued E.S.I. Card on 14th April 1969 wherein the date of entry into service is shown as 24th March 1969. She complained that the entry was not correct and she had also stated before the factory inspector that she was working for the last 3½ years. She could not work from 18th April 1969 as she had an injury in her left leg and she had sent this information of sickness first certificate with her letter dated 18th April 1969. When she went to the factory on 30th April 1969 with the E.S.I. Certificate, she was asked to take another two weeks' leave for getting herself completely recovered but the management refused to give such intimation in writing. The Management was addressed with letters dated 16th May 1969 and 3rd August 1969 but they were of no effect. It is denied that these workers refused to work as alleged by the II Party, but the II Party was making such clever attempts with *mala fide* intentions with a view to escape the legal liabilities. The I Party, therefore, sought the intervention of the

Conciliation Officer on 13th November 1969 for advising the management to reinstate the 3 workers with continuity of service and backwages and by the efforts of the conciliation officer, the Management was persuaded to come to a settlement on 3rd June 1971 whereby the Management agreed to reinstate the workers leaving the other benefits for further examination on merits. This settlement was not implemented by the management. As the Management did not implement the settlement even after a letter and a reminder was issued, the Labour Commissioner issued a show cause notice on 23rd March 1972 as to why the Management by Sri Eswar Rao Sanyasi should not be prosecuted under Section 29 of the Industrial Disputes Act for non implementation of the settlement whereupon Sri Eswar Rao Sanyasi appeared before the Labour Officer and intered into a settlement dated 26th April 1972. In pursuance of this settlement the Management reinstated all the 3 workers and the Government thereafter made the present reference. It is further alleged that even after reinstating the workers, the management had been harassing these workers. The allegation of the management that the workers have voluntarily left their services and hence they are not entitled to continuity of service and full back wages is factually, and legally incorrect and an inference of voluntary abandonment cannot be legally drawn unless from the length of absence, and from other surrounding circumstances and the intention of the party concerned. In the instant case, the workers were requesting day in and day out for re-instatement with continuity of service and back wages and all the while the management was cleverly avoiding to comply. The II Party Management never conducted any enquiry or served any notice or charge sheet or gave any opportunity to the workers before terminating their services. The entire action of the management is opposed to the principles of natural justice, equity and fair play and it amounts to nothing but victimisation and unfair labour priace and the subsequent conduct of the management also shows their *malafide* intentions.

The I Party, therefore, prayed for passing an Award granting continuity of service and full back wages since the workers could not secure jobs in any other factoy in spite of their best efforts and on account of the *malafide* efforts of the management and as the wages paid to the workers were very low not exceeding a sum of Rs. 70 a month, and the workers were forced to incur debts on account of the unreasonable attitude of the management. It was submitted that the workers never abandoned or absented themselves, that Management illegally and unjustly terminated the services of the workers without conducting any enquiry or without giving any opportunity and that in spite of the repeated requests of the workers, the management refused to give any intimation in writing.

5. The II Party by its statement submitted that Chikkaramu joined duty on 15th May 1967 and got the benefit of E.S.I. from that date and he left the services on his own accord without informing anything to the II Party on 3rd March 1969 to better his prospects. Sri Venkatesh joined duty on 24th February 1965 and got the benefit of E.S.I. card from that date. He left the services in his own accord without informing anything to the II Party on 1st June 1968 to better his prospects. The II Party stated that they had not terminated the services of these two workers nor had the management refused to take them for work at any time. The II Party had received a notice from the Labour Court at Bangalore regarding the applications made by Sri Chikka Ramu and Venkatesh under Section 33(C) (2) of the Industrial Disputes Act. In that application, the management had submitted in their objection statement that these two workers had absented themselves for work on their own accord.

Smt. Nagamma joined duty on 24th March 1969 and was in service till 26th March 1969 and got the benefit of E.S.I. from that day. She left the services of the Management on her own accord without informing the II Party on 27th March 1969 to better her prospects and the II Party did not terminate her services ner refused to take her for work at any time. Even though the management had offered to take the workers on duty, they had refused to report for duty and the management was badly in need of their services at that time. The management had received a letter dated 1st December 1969 from the Labour Officer stating that the services of these three workers were wrongly terminated. The Management filed their objections and requested the conciliation officer and the General Secretary of the Labour Union to send the workers for work but they could not comply with the request of the Management as the workers were unwilling to join their duties. After a lapse 1½ year, notice was received from the Labour Officer that conciliation proceedings would be taken up in connection with these three workers. The conciliation proceedings took place from 14th May 1971 to 3rd June 1971 and on 3rd June 1971, a settlement was arrived at between the parties whereby, it was agreed to reinstate these three workers from 8th June 1971. Accordingly the 3 workers came to the factory with the General Secretary of the Union, but they insisted to give a letter in writing regarding the continuity of service and the back wages for the period in dispute about the three workers. The II Party refused to comply with the illegal request. The I Party workers left the premises of their own accord. The Management addressed a letter to the Conciliation Officer on 14th June 1971 stating their difficulties in complying with various laws and therefore, the workers were asked to fill the E.S.I. Declaration Forms and the I Party told the Labour Inspector who had accompanied them to

the factory to report the matter to the conciliation officer and left the factory. Asking the 3 workers to give E.S.I. Declaration Forms was not a new condition imposed on them by the II Party against the terms of the settlement. Even in the terms of the settlement, it is stated that the question of giving continuity of service and the backwages for the period in dispute would be further examined with reference to the documents and decision taken on merits separately. When this was so, it is the natural corollary that the appointment of the above three workers had to be treated as fresh appointments as on 8th June 1971. On the other hand, if the dates of their previous services in the factory were to be entered in the E.S.I. Declaration Forms, it would become imperative on the part of the II Party to allow them continuity of services and back wages and all other benefits and the II Party is subjected to all the penal provisions of laws. Nothing prevented the workers to join their duty by giving E.S.I. Declaration Forms that the date of appointment as 8th June 1971 and put in their claim to whatever they were entitled to. The II Party clarified the position but received the letter dated 28th February 1972 from the Labour Commissioner for not implementing the settlement dated 3rd August 1971. Conciliation proceedings were taken on 26th April 1972 and the 3 workers were taken for work on 27th April 1972 and the II Party, therefore, prayed for dropping further proceedings as per Section 10(1) (d) of the Industrial Disputes Act as the petition is premature and not maintable.

6. The II Party then filed its rejoinder to the statement of the I Party in which the contention taken is that these workers were taken for duty on 27th April 1972 as per the settlement and it was agreed between the Conciliation Officer, the I Party and the II Party that the workers should work for a period of six months from the dates of their appointment from 27th April 1972 and then to issue a notice to the Conciliation Officer, copy of the same being posted to the I Party, for employment for a further period of two months after the I Party had finished their employment of 6 months from 27th April 1972 and these workers should leave the services on their own accord after the expiry of the two months' notice. It is contended that the I Party workmen were not at all working properly after their appointment from 27th April 1972 and were absenting without giving any notice. The II Party became disgusted and had to give notice as per the settlement asking the workers not to attend their work after the expiry of two months. No reply was received from the Conciliation Officer to the Managements letters dated 3rd November 1972, 11th November 1972 and 18th November 1972 and as the wokers themselves had left their services, the I Party did not ask for conciliation proceedings in connection with these

notices as they had committed themselves to quit after issue of such notices as per the settlement.

7. On these pleadings, the following Issues have been framed:—

(1) Whether the 3 workers, Chikkaramu, Venkatesh and Smt. Nagamma had left the services of the II Party of their own accord as contended by the II Party ?

(2) Whether the II Party is not liable to pay back wages to the said workers as contended and whether the workers are not entitled to back-wages and other benefits in view of the terms of alleged settlement set up by the II Party ?

(3) To what reliefs, if any, the parties are entitled ?

8. The I Party has examined four witnesses WW-1 to WW-4 in its support. WW-1, WW-3 and WW-4 are the three concerned workers in this dispute. WW-2 is Sri A. Venkataram who is the General Secretary of the Bangalore General Labour Union of which the concerned workers are the members. He is representing the I Party workmen in this dispute and he had to enter the witness box, since he was acquainted with all the facts and correspondence that was carried on by him and on behalf of the workers with the II Party-Management. As the workers who are examined are illiterates except WW-3 and WW-4 who know only how to sign their names. The evidence establishes all the relevant facts narrated in the statement filed by the I Party to which I have referred above at sufficient length. WW-2 has referred to all the letters sent by him under the signatures of the concerned workers to the II Party Management and has proved the acknowledgement of these letters by the II Party Management. He has spoken to the copies of these letters which are carbon copies of the original sent to the Management by registered post with due acknowledgement. The letters as referred to in the statement of the I Party, the copies of which are brought on record, will show that such letters were addressed to the Management apprising what had happened on each particular day and how the Management refused to take them to work and complaining of all the acts of harassment and other acts of unfair labour practice adopted by the Management. The only suggestion made by Sri K. Eshwar Rao for the II Party Management in the cross-examination of these witnesses including WW-2 is, that the copies produced of the letters which are acknowledged by the Management are not true copies of the letters actually sent to the Management, under the acknowledgements produced, but the copies produced were manovered ones with a view to incur the sympathy of this Tribunal. The suggestion is without any substance and does not

merit any consideration. The Management was called upon to produce the original of these copies and the best way for the Management was to produce the originals received under the acknowledgements produced by the I Party to show that the copies produced are not true copies of those letters. Mere such suggestion is of no avail to the Management and I see absolutely no reason to disbelieve the evidence of WW-2 who himself had typed those letters under the instructions of the workers and sent them to the Management. Thus, if these events and facts as narrated in the innumerable letters sent by the I Party to the II Party are taken into consideration, it must follow that these workers were all along after the Management repeatedly requesting them for allowing them to work in their factory and that the Management which was refusing to give them work, put them under undue pressure for giving an undertaking for resigning from the membership of their union and for withdrawing their claim pending before the Labour Court. From the evidence brought on record, it cannot at all be suggested on behalf of the Management that the workers were unwilling to work in their factory in spite of the Management's offering to give them work or that the workers had of their own accord abandoned their jobs in the factory of the II Party with a view to better their prospects. The evidence brought on record on behalf of the I Party would clearly establish that they were making consistent efforts to persuade the management to allow them to work peacefully.

9. There is absolutely no evidence adduced on behalf of the Management even to suggest that the concerned workers had voluntarily abandoned their work. Sri K. Easwar Rao appeared to be satisfied by merely putting a suggestion in the cross-examination of these witnesses that they were not intimated in writing by the Management that their services were terminated or that the management were not willing to give them work. It would be simply begging a question. If the Management had issued anything in writing to the concerned workers to that effect, the workers would have definitely relied on that and challenged the action of the management. In turn it may be asked on behalf of the workmen whether the workers had given anything in writing to the management that they had voluntarily abandoned their services with a view to better their prospects elsewhere. There is nothing, even a suggestion worth consideration, in the cross-examination of these witnesses to infer that the workers had voluntarily abandoned the services of the II Party. On the contrary, the statment filed gy the I Party, has elaborately referred to the unfair labour practice adopted by the management. WW-1 and WW-2 have referred to the application filed by WW-1 and WW-3 along with other workers of the II Party Management, before the Labour Court under Section 33 (C) (2) of the Industrial Disputes Act against the Management. WW-1 has also referred to another application filed in the Labour

Court. It is not denied that such applications were filed by the workers in the Labour Court. but what has been suggested by Sri K. Eshwar Rao for the II Party, is that even in the proceedings before the Labour Court, he had offered to take workers back and that the workers themselves had not reported for duty. WW-3 has referred to the endorsement Ext. 1(b) given to him by Sri K. Eshwar Rao telling the witness that he should withdraw the case from the Labour Court and that he would not be removed from service and that he would be made permanent. This endorsement Ext. 1(b) is under the signature of Sri Eshwar Rao who on behalf of the II Party has conducted this case and cross examined the witnesses. The suggestion made in the cross-examination of WW-3 was that Ext. 1(b) was a forged letter or that it was not given to him by Sri Eshwar Rao. The suggestions made to the witness are in consistent with in themselves, in that, at one stage Sri Eshwar Rao suggesed it to be a forged letter and in another breath he suggested that it was got signed by Sri Eshwar Rao under the contents already written in Kannada in Ext. 1(b). Sri Eshwara Rao did not dispute his signature on Ext. 1(b) and he admitted that he had put his signature on Ext. 1(b) and has also put the date on Ext. 1(b) in his own hand. He has also suggested that he does not know Kannada and that the contents in Kanada in Ext. 1(b) were already written before his signature was obtained on Ext. 1(b). The suggestions are all denied. During the evidence the presence of Muniyappa who is a Maistry employed by the Management was noticed and it was also stated that he was present at the time when Ext. 1(b) was written and signed by Sri Eshwara Rao and handed over to WW-3. This Muniyappa is not examined. Sri Eshwara Rao himself does not step into the witness box in support of his case. Ext. (b) is not produced to the surprise of the II Party, but it has been referred in Ext. W5 sent by WW-2 This undertaking Ext. 1(b) is incorporated in the letter Ext. W5 sent by WW-2 on behalf of WW-3 to the Management. The undertaking Ext. 1(b) is dated 1st March 1969 and the contents are reproduced in Kannada in the typed letter Ext. W5 which is dated as far back as 9th April 1969. It is not at all attacked or shown to have been denied by the Management immediately after 9th April 1969 when it was specifically brought to the notice of the Management. I see. therefore, no substance in the suggestion made by Sri K. Eshwara Rao for the Management and there is no reason to disbelieve the evidence adduced on behalf of the I Party.

10. As against the convincing evidence produced on behalf of the I Party, the Management has not preferred to let in any evidence either by way of rebuttal or in support of its contention that the workers had voluntarily abandoned the services of the II Party. The evidence consistently shows the conduct on the part of the I

Party workers as against the attitude adopted by the Management and all the allegations made in the I Party's statement against the conduct of the II Party are borns out by documents brought on record. In the context of these facts and circumstances brought on record before this Tribunal, it cannot be suggested that the workers had abandoned the services of the II Party nor it can be suggested from any circumstances that such intention on the part of the concerned workers of having abandoned the services of the II Party could be inferred. In this connection Sri A. Venkataram relied on the decision reported in 1963 (ii) L.L.J. 638 (Buckingham and Carnatic Co. Ltd., vs. Venkatayya), for the proposition "that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon his service. Abandonment or relinquishment of service is alway a question intention, and, normally such an intention cannot attributed to an employee without adequate evidence in that behalf." As pointed out above, no such inference of abandonment or relinquishment of service by the concerned workers, as suggested by the II Party, can be drawn in the circumstances. The Issue No. I is, therefore, answered in the negative.

11. It must follow that the II Party is liable to pay back wages to the said workers. The contention taken by the Management that the workers are not entitled to back wages and other benefit by virtue of the terms of the alleged settlement is also not borne out either by the terms of the settlement or by any other evidence or documents.

12. The Rejoinder filed by the II Party to the Statement of the I Party refers to subsequent events and it is not relevant for the purpose of the issue involved in this dispute and it was pointed out by Sri A. Venkataram that this contention of the management is a subject matter of the complaints filed by these workers under Section 33-A of the Industrial Disputes Act against the Management.

13. The I Party has submitted its statement that the workers concerned could not secure any jobs in any of the factories in spite of their efforts and on account of the *mala fides* of the management and as the wages paid to the workers were very low not exceeding Rs. 70 per month, the workers were forced to incur debts. It was submitted that the workers had never abandoned or absented themselves, that the management illegally and unjustly terminated their services without conducting any enquiry and without giving any opportunity and in spite of the repeated request by the workers,

the management refused to give them any work. In the evidence of the witnesses, however, it is not brought out that they were without jobs during the relevant period and in the absence of any evidence in that regard. it appears fair that it should be held that the workers are entitled to half back wages with continuity of service.

14. In the result, an award is made that the workers Chikkaramu, Venkatesh and Nagamma shall get their half back wages from 12th April 1969, 12th April 1969 and 8th April 1969 respectively with the benefit of continuity of service. In the circumstances, no order as to costs is made.

(Dictated to the Stenographer, transcribed by him and corrected by me).

M. C. KONNUR,
Presiding Officer,
Industrial Tribunal, Bangalore.

Order No. SWL 87 LLA 75, Bangalore, dated 10th April 1975.

S.O. 1142.—

Whereas by State Government Order No. FCL 1209 LLD 71, dated 4th August 1972 the Industrial Dispute between the workmen and the management of Sanyasi Brothers, Bangalore-2, was referred to the Industrial Tribunal, for adjudication.

And, Whereas the Industrial Tribunal, Bangalore has submitted to the State Government its award in respect of the said Industrial dispute.

Now, therefore, in exercise of the powers conferred by section 17 of the Industrial Dispute Act, 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above, in the *Karnataka Gazette.*

By Order and in the name of the Governor of Karnataka,

K. MYLARAPPA,
Under Secretary to Government,
Social Welfare and Labour Department.